



**INVOLUNTARY HOSPITALIZATION
&
PROGRESSIVE TREATMENT PROGRAM
LAWS**

**A BASIC GUIDE TO LAWS COVERING INVOLUNTARY
ADMISSION TO PSYCHIATRIC HOSPITALS AND PROGRESSIVE
TREATMENT PROGRAM LAWS**

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Table of Contents

Introduction.....	4
Voluntary Admission	5
Involuntary Hospitalization	1
Where a Person May be Involuntarily Hospitalized	7
Protective Custody	7
Protective Custody Process.....	7
Transportation used in Protective Custody	8
When a Law Enforcement Officer May Take a Person Into Protective Custody	8
Probable Cause in Protective Custody	9
Awaiting Evaluation	9
How Long May Protective Custody Last?.....	10
Law Enforcement Officer Responsibility After Evaluation	11
Voluntary Admission	11
Involuntary Admission Application.....	12
Likelihood of Serious Harm.....	12
Part 1 of the Blue Paper	13
Part 2 of the Blue Paper	13
Part 3 of the Blue Paper	14
Means of Transportation to the Hospital	14
Hospital Admission.....	14
24-Hour Post Admission Process.....	15
Post-Admission Notices.....	15
How Long do Blue Papers Last?	15
Court Commitment Application	16
Court Application Notice Given by Hospital.....	16
Court Application.....	17
Notices by the Court	17
Appointments by the Court.....	18
Report of Examination	18
Hearing.....	19

Transportation to Hearing	20
Rights at Hearing	20
Notice to the Person by the Court	21
Court Hearing And Order On Involuntary Hospitalization	21
Court Hearing and Order on Involuntary Treatment	22
When is the Order Entered?	23
Notices by the Court	23
Appeal	23
Habeas Corpus	23
Continued Involuntary Hospitalization	24
Release During Commitment	24
Obligations in Discharge Planning	24
Convalescent Status	25
Return to Hospital from Convalescent Status	25
Involuntary Outpatient Services: Progressive Treatment Program	26
Definition: Assertive Community Treatment	27
Definition: Likelihood of Serious Harm	27
Definition: Severe and Persistent Mental Illness	28
Definition: Inability to Make an Informed Decision	29
Involuntary Outpatient Treatment Services	29
Application for Admission to the Progressive Treatment Program	30
Progressive Treatment Program: Admission Requirements	30
Application Contents	31
Notices	31
Appointment of Independent Examiner	32
Independent Examination	32
Court Hearing	33
Transportation to Hearing	33
Rights at Hearing	33
What the Applicant Must Present at Hearing	34
Effect of an Advance Directive	34

Court Order	35
Compliance	35
Consequences of Non-Compliance with Court Order	35
Duration of Court Order.....	36
Appeal	36
Other Post Order Procedures	36
Involuntary Hospitalization Statutory Timelines.....	37
Link to Forms.....	38
Notes	39

INTRODUCTION

This manual is designed as a *simple* guide through the involuntary hospitalization process and the progressive treatment program laws.¹

Under Maine law, an application for involuntary hospitalization may also include a request for an order of involuntary treatment. This means that when someone applies to have a person admitted to a psychiatric hospital, the same application can ask the court to authorize treatment—typically with medication—without the patient’s consent. A guide to this process is provided in the section on involuntary hospitalization.

You’ll find a chart laying out critical timelines on [page 37](#).

There are blank pages at the end of the manual for your own notes.

This manual has been prepared as a public service.

¹ Although the statute refers to this as a *Progressive Treatment Program*, it authorizes a form of involuntary outpatient commitment—a court-ordered treatment arrangement that requires an individual to comply with a mental health care plan while living in the community, under conditions set by the court.

VOLUNTARY ADMISSION

This manual describes the involuntary hospitalization process. Of course, a person may also be admitted to a psychiatric hospital initially on a voluntary basis. As noted in this manual, a voluntary admission can also occur at various points even after an involuntary process is initiated.

A person may be admitted on a voluntary basis if:

- The chief administrative officer of the psychiatric hospital deems the person suitable for admission, care and treatment.
- Suitable accommodations are available (unless there is a medical emergency in which case, this limitation does not apply).
- The person is under the age of 18, the person's parent or guardian consents.
- The person is under the age of 18 and the admission is to a state mental health institute, the Commissioner of the Department of Health and Human Services consents.²
- The person is an adult and under guardianship, the person's guardian consents and the person does not object to the admission.
- The person has an Advance Directive authorizing psychiatric hospital treatment and the admission is consistent with the terms of the directive.³

A person who is admitted voluntarily is free to leave the psychiatric hospital at any time after admission and within 16 hours of the patient's request to leave, unless the hospital initiates an involuntary admission within that period.

34-B MRSA § 3831; 34-B MRSA

² The state mental health institutes generally do not admit minors.

³ An advance directive does not create a legal obligation for a psychiatric hospital to admit a person or to provide the specific treatment requested in the directive. Hospitalization under this section may not exceed five working days unless further steps are taken, and treatment decisions remain subject to the judgment of the evaluating physician, psychologist, or hospital administrator regarding the person's best interests. 34-B MRSA § 3831(6)

INVOLUNTARY HOSPITALIZATION

WHERE A PERSON MAY BE INVOLUNTARILY HOSPITALIZED

A person may be admitted involuntarily to:

- State institutions: Riverview Psychiatric Center and Dorothea Dix Psychiatric Center.
- Non-state mental health institutions: a public institution, a private institution or a mental health center, which is administered by an entity other than the state and which is equipped to provide inpatient care and treatment for the mentally ill. This includes both psychiatric hospitals and community hospitals with psychiatric units.⁴

34-B MRSA § 3801(6) and (9); 34-B MRSA § 3861

PROTECTIVE CUSTODY

An involuntary admission may start with protective custody. This happens when a law enforcement officer takes a person into custody to bring the person in for an evaluation for possible involuntary psychiatric hospitalization. A law enforcement officer may be a policeman or an officer of the county sheriff's department.

34-B MRSA § 3862

PROTECTIVE CUSTODY PROCESS

The law enforcement officer must bring the person for an evaluation by a medical practitioner. A medical practitioner is a licensed physician, licensed physician assistant, certified psychiatric clinical nurse specialist, certified nurse practitioner or licensed clinical psychologist. Most frequently the law enforcement officer takes the person to a hospital emergency room.

34-B MRSA § 3862; 34-B MRSA § 3801(4-B)

⁴ Currently these hospitals and units are commonly known as: Spring Harbor (Westbrook), Acadia (Bangor), Maine Health Sanford Behavioral Health Units (Sanford), Maine Medical Center P-6 (Portland), Mid Coast Behavioral Health Unit (Brunswick), St. Mary's Behavioral Health Unit (Lewiston), Pen Bay Hospital PARC unit (Rockport), MaineGeneral Medical Center Psychiatric Unit (Augusta), Northern Maine Medical Center Inpatient Psychiatric Unit (Fort Kent).

TRANSPORTATION USED IN PROTECTIVE CUSTODY

The law enforcement officer must use the least restrictive form of transportation that meets the security needs of the situation when taking the person to the evaluation.

34-B MRSA § 3862(4)

WHEN A LAW ENFORCEMENT OFFICER MAY TAKE A PERSON INTO PROTECTIVE CUSTODY⁵

In order to take a person into protective custody, the law enforcement officer must have probable cause to believe that the person:

- may be mentally ill, **AND**
- that the person poses a likelihood of serious harm to themselves or to someone else because of the person's mental illness. **OR**
- if a law enforcement officer knows that a person has an advance health care directive authorizing mental health treatment and the officer has probable cause to believe that the person lacks capacity.

34-B MRSA § 3862(1)

⁵ Note: This guide addresses only the *civil involuntary commitment* process under Title 34-B, sections 3862 through 3874, which govern psychiatric evaluation, hospitalization, and treatment. It does not cover the separate statute on Extreme Risk Protection Orders (commonly called the “*yellow flag*” law), codified at section 3862-A. Although that law appears in proximity to the civil commitment statutes it is a distinct firearm-related public safety process, not a mental health commitment procedure. Nothing in this guide should be interpreted as applying to, or providing guidance on, the yellow flag law.

PROBABLE CAUSE IN PROTECTIVE CUSTODY

If the officer's beliefs are based on information from a 3rd party – such as a family member or a mental health worker – the officer must make sure that the 3rd party recently talked with or recently saw the person who is being considered for protective custody and that the third party has reason to believe the person may be mentally ill and, because of that condition, poses a likelihood of serious harm.

34-B MRSA § 3862(1)

AWAITING EVALUATION

If the person is brought to the emergency department, law enforcement and health care facilities can create written “custody agreements” that set out who is responsible for the person while they wait. With a custody agreement in place, responsibility for the person can be handed over to another law enforcement officer, a public health official, or a hospital administrator (or someone the hospital designates) but only if the facility has agreed to this in writing. If no agreement is in place, the standard statutory procedures continue to apply.⁶

A person with mental illness may not be detained or confined in any jail or local correctional or detention facility, whether pursuant to the protective custody procedure, a custody agreement or under any other circumstances, unless that person is being lawfully detained in relation to or is serving a sentence for commission of a crime.

34-B MRSA § 3863(2-A)

⁶ In many cases, this means responsibility remains with the law enforcement officer who brought the person in under the protective custody statute.

HOW LONG MAY PROTECTIVE CUSTODY LAST?

A person can remain in protective custody up to and during the evaluation and then once the medical practitioner completes the certificate:

- For a period up to 18 hours, if the evaluation was conducted in a non-hospital setting, or 24 hours if done in a hospital, while a judge's review of the application is sought, **OR**
- If the evaluator's official statement was filled out after 11:00 p.m., the person may be transported to a psychiatric hospital and held there until the judge's signature is obtained as soon as possible after 7:00 a.m. **OR**
- Once initial judicial authorization is obtained, a person who has been held in a hospital against that person's will for no more than 24 hours may be held for a reasonable additional period of time, not to exceed 48 hours, if:
 - The hospital has had an evaluation of the person conducted by an appropriate practitioner and that evaluation concludes that the person poses a likelihood of serious harm due to mental illness; **AND**
 - The hospital, after undertaking its best efforts, has been unable to locate an available inpatient bed at a psychiatric hospital or other appropriate alternative; **AND**
 - The hospital has notified the Department of Health and Human Services of the name of the person, the location of the person, the name of the practitioner who conducted the evaluation the time the person first presented to the hospital.
- If a person remains in a general hospital for the full 48 hours allowed the person may be held for one additional 48-hour period, if:
 - The hospital satisfies again the above three requirements; **AND**
 - The Department of Health and Human Services provides its best efforts to find an inpatient bed at a psychiatric hospital or other appropriate alternative.
- No further judicial authorization is required during these two 48-hour periods. If no psychiatric hospital is identified as appropriate for placement during this time, then a new application and certifying examination are required to restart the process and must be

submitted for judicial endorsement within 24 hours after the initial 120-hour period ends.⁷

34-B MRSA § 3862(3); 34-B MRSA § 3863(3)

LAW ENFORCEMENT OFFICER RESPONSIBILITY AFTER EVALUATION

If the evaluator determines that hospitalization is not necessary, the law enforcement officer must release the person from protective custody. With the person's permission, the officer must either return the person immediately to their place of residence (if it is within the officer's jurisdiction) or to the place where they were originally taken into custody. However, if the person is also under arrest for a criminal offense, they may be held in custody on those criminal charges in accordance with the law.

34-B MRSA § 3862(2)

VOLUNTARY ADMISSION

If the evaluator believes that the person needs to be hospitalized, a person can still be admitted on a voluntary basis.

34-B MRSA § 3831; 34-B MRSA § 3863(5-A)

⁷ Although the statute outlines a maximum of 120 hours (five days), the Maine Supreme Judicial Court has said hospitals may “restart” the process by submitting a new evaluation and application, potentially extending detention beyond five days. The court did not clarify how many times this can be repeated, leaving the total possible length of custody uncertain (*A.S. v. LincolnHealth*, 2021 ME 6). A later Maine Superior Court decision held that when someone is detained well beyond five days, they are entitled to a court-appointed lawyer and a hearing to protect their rights, MaineGeneral Medical Center, No. AUGSC-CV-22-189, 2024 WL 3568707, at *5 (Me.Super. Feb. 13, 2024). (“The Court has concluded in this matter that A.F.'s due process rights were violated by the length of her detention at MGMC. She was entitled to appointment of counsel and a hearing before a Maine Court once it became apparent that the “restart” process would fail to result in admission to a psychiatric hospital where she could be held while the “white paper” process, with its elevated due process protections, would unfold.”)

INVOLUNTARY ADMISSION APPLICATION

An emergency application must be completed before a person can be admitted to a psychiatric hospital involuntarily. This application is called the “blue paper” in Maine.

34-B MRSA § 3863

LIKELIHOOD OF SERIOUS HARM

“*Likelihood of serious harm*”, is a term that is used for protective custody, the blue paper, in judicial commitment and appears in this manual frequently. In the context of protective custody and inpatient involuntary hospitalization it means:⁸

- A substantial risk of physical harm to the person, as shown by recent threats of, or attempts at, suicide or serious self-inflicted harm, **OR**
- A substantial risk of physical harm to others as shown by recent homicidal or violent behavior or by recent actions that placed others in reasonable fear of serious physical harm, **OR**
- A reasonable certainty that the person will suffer severe physical or mental harm as shown by recent behavior that demonstrates the person’s inability to avoid risk or to protect the person adequately from impairment or injury.

34-B MRSA § 3801(4-A)

⁸ The term has a different meaning when used in involuntary outpatient services. That definition appears on [page 28](#) of this manual in the section covering outpatient services.

PART 1 OF THE BLUE PAPER

Any person, including health professionals and law enforcement officers, may complete Part 1 of the blue paper. The person must state his or her belief that:

- The person to be examined has a mental illness
- The person poses a likelihood of serious harm because of the mental illness

The person must also state why they have these beliefs.

34-B MRSA § 3863(1)

PART 2 OF THE BLUE PAPER

A medical practitioner completes Part 2 of the blue paper. A medical practitioner is a licensed physician, licensed physician assistant, certified psychiatric clinical nurse specialist, nurse practitioner or licensed clinical psychologist. The practitioner must officially state:

- That they examined the person on the same day as filling out the blue paper;
- That they believe the person has a mental illness;
- That they believe that because of the mental illness that the person poses a likelihood of serious harm;
- That adequate community resources are unavailable for care and treatment of the person's mental illness; and
- The grounds for the opinion.

The practitioner's opinion may be based on personal observation or on history and information from other sources that the practitioner considers reliable, including, but not limited to, family members.

34-B MRSA § 3863(2)

PART 3 OF THE BLUE PAPER

A judge or justice of the peace signs Part 3 of the blue paper.

This judge or justice is simply making sure that the application was completed the way the law requires. This official is not making any decision about whether the statements on the application are true or not.

The judge or justice of the peace must also name the psychiatric hospital to which that person is to be taken.⁹

34-B MRSA § 3863(3)

MEANS OF TRANSPORTATION TO THE HOSPITAL

Transportation to the hospital must be by the least restrictive form of transportation that meets *the clinical needs of the patient*. “Least restrictive form of transportation” means the vehicle and any restraints used should impose the least possible restriction, while also taking into account how the experience may affect or stigmatize the person being transported

34-B MRSA § 3863(4); 34-B MRSA § 3801(1-B)

HOSPITAL ADMISSION

A person brought to a psychiatric hospital on a blue paper is not automatically admitted. The head of the psychiatric hospital may do one of three things.

- Admit the person as an involuntary patient, so long as the professional who signed the blue paper completed the examination no more than *two days* before the date of admission, **OR**
- Admit the person as a voluntary patient, **OR**

⁹ See *How Long May Protective Custody Last?* on [page 10](#) for information on restarting the process when no psychiatric hospital has been identified for placement. See Also <https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/notification-re-new-Blue-Paper-forms-3-2-2021-signed.pdf>

- Not admit the person at all, if the hospital believes that the person does not need involuntary hospitalization and either does not need or does not agree to voluntary hospitalization.

34-B MRSA § 3861(1) and (2)

24-HOUR POST ADMISSION PROCESS

A doctor or psychologist must examine the patient within 24 hours of admission. If this professional does not officially find that the person has a mental illness and due to the mental illness poses a likelihood of serious harm, the person must be released.

34-B MRSA § 3863(7)

POST-ADMISSION NOTICES

After consulting the person admitted, the hospital must give notice that the person has been admitted to the hospital to the patient's guardian, spouse, parent, adult child or, if none exists, to the next of kin or friend.

If the hospital believes that this notice would pose a risk of harm to the patient, then it may not be given.

If a person brought to the hospital by law enforcement for examination is not admitted and is released, the hospital must notify the officer or the officer's agency of the person's release.

34-B MRSA § 3863(6) and (6-A)

HOW LONG DO BLUE PAPERS LAST?

Within 3 days from the date of admission of the person under this section, the hospital must:

- Admit the person as a voluntary patient, **OR**
- File an application for judicial commitment except that if the 3rd day falls on a weekend or holiday, the application must be filed on the next business day following that weekend or holiday, **OR**
- Discharge the person.

- If no application to the District Court is timely filed, the person must be promptly discharged.

The patient may be discharged sooner, if during the period of the blue paper the hospital decides that the person may be safely discharged.

The hospital may admit a person as a voluntary patient at any time during the period of the “blue paper.”

34-B MRSA § 3863(5-A)

COURT COMMITMENT APPLICATION

If the hospital believes that the person needs continued hospitalization after the blue paper period, and if the person has not agreed to voluntary hospitalization, the hospital can only keep the person hospitalized if court commitment procedures are started. The procedures are started with an application to the District Court.

34-B MRSA § 3863(5-A); 34-B MRSA § 3864

COURT APPLICATION NOTICE GIVEN BY HOSPITAL

Before filing an application for court commitment, the hospital must give the person a copy of the application to the person. It must also give the person and his or her guardian or next of kin notice of the following:

- The right to hire an attorney or to have an attorney appointed;
- The right to choose an independent examiner or to have his/her attorney select an independent examiner; and
- How to contact the District Court.

34-B MRSA § 3864(1)(D)

COURT APPLICATION

An application for court commitment is filed with the District Court having territorial jurisdiction over the psychiatric hospital.

For patients at state hospitals, applications may be filed by the chief administrative officers. For patients at designated non-state mental health institutions, the chief administrative officer may seek involuntary commitment only by requesting the commissioner to apply.

The application is a request to the court to issue an order for hospitalization. The hospital may also ask the court to issue an order authorizing involuntary treatment.

The following documents must be attached to the application.

- The blue paper;
- The evaluation completed within 24 hours of admission;
- A statement signed by the chief administrative officer of the hospital certifying that the patient was given a copy of the application, the attached documents and the notice that they gave the person and his or her guardian or next of kin the required notice of rights; and
- A copy of the notice and instructions given to the person.

34-B MRSA § 3864(1)

NOTICES BY THE COURT

When the court receives the application, it must:

- Send a notice to the person that the application has been received and include the date of the hearing. This notice has to be mailed within two days of the filing of the application.
- Send the same notice to the person's guardian, spouse, parent, adult child, or, if none exist, to the person's next of kin or friend, unless this notice would pose a risk of harm to the patient.

34-B MRSA § 3864(3)

APPOINTMENTS BY THE COURT

Three days after the person was informed of their rights, the court will appoint an attorney if the person has not made other arrangements to be represented.

The court will also appoint a medical practitioner to examine the person and report to the court. If, in addition to seeking involuntary hospitalization, the hospital is requesting an order permitting it to involuntarily treat the person, the court must appoint a medical practitioner who is qualified to prescribe medication.

If the person or the person's attorney has notified the court of a choice of examiner, the court will give preference to appointing that examiner, provided the examiner is reasonably available.

34-B MRSA § 3864(4) and (5)

REPORT OF EXAMINATION

The examiner must report the following to the court:

- Whether the person is a mentally ill person. A mentally ill person is defined as a person having a psychiatric or other disease that substantially impairs the person's mental health or creates a substantial risk of suicide. It may include persons suffering from the effects of the use of drugs, narcotics, hallucinogens or intoxicants, including alcohol. It does not include individuals with developmental disabilities or a person diagnosed as a sociopath.
- Whether the person poses a likelihood of serious harm. **AND**
- Whether adequate community resources are available for care and treatment of the person's mental illness
- Whether the person's clinical needs may be met by an order to participate in a progressive treatment program
- When involuntary treatment is at issue:
 - Whether the person lacks the capacity to make an informed decision regarding treatment;¹⁰

¹⁰ The definition for inability to make an informed decision appears on [page 29](#).

- Whether the person is unable or unwilling to comply with recommended treatment;
- Whether the need for the treatment outweighs the risks and side effects;
- Whether the recommended treatment is the least intrusive appropriate treatment option; and
- Why the treatment is needed, which may be because:
 - Failure to treat the illness would result in lasting or irreparable harm to the person or;
 - Without the recommended treatment the person’s illness or involuntary commitment may be significantly extended without addressing symptoms that cause the person to pose a likelihood of serious harm.
- If the court orders that the person participate in the progressive treatment program, the examiner must also report to the court on the items listed in the section entitled “Independent Examination” on [page 32](#).

34-B MRSA § 3864(4)(E) and (7-A); 34-B MRSA § 3801 (5)

HEARING

The hearing must be held within 14 days of the date of application.¹¹

The hearing may be postponed for up to 21 days if the hospital or the patient requests a postponement for a good reason or if the court independently determines there is good reason for postponing the hearing.

The hearing will be conducted in an informal, but orderly manner, in a setting that is not likely to have a harmful effect on the mental health of the patient.

The hearing is confidential and reports of the proceedings may not be released to the public or press without the person’s consent and approval of the Court.

If the person requests a public hearing, the court may allow the hearing to be public.

¹¹ The person may be held in the hospital after the application is filed and until the hearing is held with some limited exceptions. *34-B MRSA § 3864 (2) Detention pending judicial determination*

The court may separate the hearing on commitment from the hearing on involuntary treatment.

If the court does not hold the commitment hearing within the required time, including any approved extensions, it must dismiss the application and order the person's release.

If the court does not hold the hearing on involuntary treatment within the required time, it must also dismiss that application.

34-B MRSA § 3864(5)

TRANSPORTATION TO HEARING

The hearing may occur at the hospital. If not, the person must be transported to the hearing. Transportation costs are borne by the District Court, except when the individual is already under court commitment and the hearing is a recommitment, and then costs are borne by the Department of Health and Human Services. Transportation must be by the least restrictive means appropriate to the person's clinical condition.

34-B MRSA § 3864(5), (9), and (10)

RIGHTS AT HEARING

The person and any individual to whom notice is required to be sent has the right to appear at the hearing, to testify, to present witnesses and to cross-examine witnesses. If the person has not retained an attorney, the court will appoint one.

34-B MRSA § 3864(5)¹²

¹² The Maine Supreme Judicial Court has interpreted this section as not allowing an individual to proceed without an attorney. "The ability to proceed without legal representation at any of the key stages of an involuntary commitment proceeding is foreclosed by the statute" *In re Penelope W.*, 2009 ME 81, ¶ 9, 977 A.2d 380, 382

NOTICE TO THE PERSON BY THE COURT

Before the hearing starts, the court must inform the person that if an order of involuntary commitment is entered, that person may not own, possess, or have a firearm under their control.

34-B MRSA 3864; 15 MRSA § 393(1)

COURT HEARING AND ORDER ON INVOLUNTARY HOSPITALIZATION

To order a person's involuntary hospitalization after this hearing, the District Court must find:

- Clear and convincing evidence that the person is mentally ill and that their recent actions or behavior show the illness poses a likelihood of serious harm;¹³
- Adequate community resources for care and treatment of the person's mental illness are unavailable;
- Inpatient hospitalization is the best available means for treatment; and
- The court is satisfied with the individual treatment plan proposed by the psychiatric hospital.

If the court makes all four findings, it may order commitment to a psychiatric hospital for a period not to exceed four months initially, and not more than one year after the first and all subsequent hearings.¹⁴ The court may issue the order immediately or within 24 hours after the hearing. If no order is issued within 24 hours, the application must be dismissed and the person discharged.

If the court makes the first three findings but is not satisfied with the proposed treatment plan, it may continue the case for up to 10 days to allow the hospital to revise and resubmit the plan.

¹³ Clear and convincing evidence exists where "the court could reasonably have been persuaded that the required factual findings were proved to be highly probable." *In re Commitment of M.*, 2020 ME 99, ¶ 26

¹⁴ The statute allows for the court to make other findings relating to the Progressive Treatment Program though this is uncommon in practice. The Progressive Treatment Program is discussed later in this guide.
34 B MRSA § 3864(6)(C).

If the court does not make all required findings, the application must be dismissed and the person discharged.

34-B MRSA § 3864(6) and (7)

COURT HEARING AND ORDER ON INVOLUNTARY TREATMENT

After ordering the person's involuntary commitment, the court may authorize a psychiatric hospital to implement a recommended treatment plan without the person's consent for up to 120 days, or until the end of the commitment, whichever occurs first, if it finds:

- The person lacks capacity to make an informed decision regarding treatment;
- The person is unable or unwilling to comply with recommended treatment; and
- The need for the treatment outweighs the risks and side effects.
- The recommended treatment is the least intrusive appropriate treatment option.

In determining the need for treatment, the court may consider, among other factors:

- That failure to treat the illness is likely to cause lasting or irreparable harm to the person;
OR
- That, without the recommended treatment, the person's illness or involuntary commitment may be significantly extended without addressing the symptoms that cause the person to pose a likelihood of serious harm.

If the court makes these findings, it may either:

- Authorize the hospital to carry out the recommended treatment plan without consent, or
- Appoint a suitable surrogate decision-maker to act on the person's behalf for the duration of the commitment. The surrogate must be suitable, willing, and available to act in the person's best interests.

34-B MRSA § 3864 (7-A)

WHEN IS THE ORDER ENTERED?

The court usually issues its order immediately after the close of the hearing, but it may take additional time to consider the case. If the court does not issue an order of commitment within 24 hours, it must dismiss the application and order the patient discharged immediately. When the court does issue an order of commitment, it may also include an order for involuntary treatment, if requested and supported by the required findings.

34-B MRSA § 3864(7)(B)

NOTICES BY THE COURT

The court must transmit an abstract of any order for involuntary commitment to the Department of Public Safety, State Bureau of Identification.

The court shall inform the person that possession, ownership or control of a firearm by that person is prohibited by law.

34-B MRSA § 3864 (12) and (13)

APPEAL

The person may appeal the court order to the Superior Court. The appeal must be filed within 30 days of the District Court's order.

34-B MRSA § 3864(11); Rule 76D, Maine Rules of Civil Procedure

HABEAS CORPUS

A person who is hospitalized is at all times entitled to petition the court for a writ of habeas corpus if the person believes they are unlawfully detained.

34-B MRSA § 3804; 34-B MRSA § 3864(8); 14 MRSA § 5501

CONTINUED INVOLUNTARY HOSPITALIZATION

If the chief administrative officer of the psychiatric hospital believes that a person still needs involuntary hospitalization, the officer must notify the Commissioner of Health and Human Services. The Commissioner may then apply to the District Court—no later than 21 days before the current commitment period ends—for a hearing on whether the person should remain hospitalized. All other procedures are the same as for an original commitment, except that a person may be recommitted for a period of up to 12 months.

34-B MRSA § 3864(8)

RELEASE DURING COMMITMENT

A hospital is not required to hospitalize a person for the entire period of commitment. The hospital must, as often as practicable, but no less than every 30 days, examine the person in order to determine their mental status and need for continued hospitalization and must discharge the person when “conditions justifying hospitalization no longer obtain.”¹⁵ The period of inpatient commitment also terminates if the person is admitted to the progressive treatment program.

34-B MRSA § 3871(1), (2), and (6)

OBLIGATIONS IN DISCHARGE PLANNING

In conducting discharge planning, a hospital must inquire (and document that it has inquired) whether the patient has access to firearms and must notify the patient, the patient’s family and any other caregivers that possession, ownership or control of a firearm by the person to be discharged is prohibited under law.

34-B MRSA § 3871(7)

¹⁵ The statute does not define what “conditions justifying hospitalization” means, and no Maine case law has interpreted this provision.

CONVALESCENT STATUS

A hospital may release a person to live in the community on convalescent status. People on convalescent status technically remain patients of the hospital.

The chief administrative officer of the psychiatric hospital may authorize the convalescent status release of a person when the officer believes

- The person's condition has improved;
- It is in the person's best interest; **AND**
- The patient does not pose a likelihood of serious harm.

The chief administrative officer of a non-state psychiatric hospital must also obtain the approval of the commissioner before releasing an involuntarily committed patient to convalescent status. The request for approval must contain a plan for continued responsibility.

34-B MRSA § 3870(1)

RETURN TO HOSPITAL FROM CONVALESCENT STATUS

A person who was a voluntary patient at the time convalescent status started may return voluntarily to the hospital if hospitalization is needed. The person may be returned involuntarily only if "blue papers" are started.

A person who was an involuntary patient may be returned voluntarily **OR** involuntarily if:

- The hospital considers it in the person's best interest, **OR**
- The hospital believes that the person poses a likelihood of serious harm; **AND**
- The hospital issues an order for return;
- The order is endorsed by a judge or justice of the peace, **AND**
- The judge decides it is in the person's best interest to return or that the person poses a likelihood of serious harm.

34-B MRSA § 3870(4)

**INVOLUNTARY OUTPATIENT SERVICES: PROGRESSIVE
TREATMENT PROGRAM**

DEFINITION: ASSERTIVE COMMUNITY TREATMENT

An ACT Team has the following characteristics and responsibilities:

- The team consists of staff from multiple disciplines. It must include a prescriber, registered nurse or licensed practical nurse, certified rehabilitation counselor or certified employment specialist, a peer recovery specialist and a substance use disorder counselor. It may include an occupational therapist, community-based mental health rehabilitation technician, a psychologist, licensed clinical social worker, or licensed clinical professional counselor.
- Team services must be available 24 hours per day, seven days per week.
- The team must provide treatment, rehabilitation and support services in order to address the person's symptoms stability and prevent relapse.
- The team assists the person
 - in maintaining safe affordable housing in normative settings;
 - in establishing natural support networks to combat isolation and withdrawal;
 - in minimizing involvement with the criminal justice system;
 - with individual recovery education; and
 - with services to enable the person to function at a work site.

34-B MRSA § 3801(11)

DEFINITION: LIKELIHOOD OF SERIOUS HARM

For all purposes related to the Progressive Treatment Program, including original admission and re-hospitalization during participation in the program, "likelihood of serious harm" has the following definition

- In view of the person's treatment history, current behavior and inability to make an informed decision, a reasonable likelihood that the person's mental health will deteriorate and that the person will in the foreseeable future pose:

- A substantial risk of physical harm to the person as manifested by recent threats of, or attempts at, suicide or serious self-inflicted harm;
- A substantial risk of physical harm to other persons as manifested by recent homicidal or violent behavior or by recent conduct placing others in reasonable fear of serious physical harm; or
- A reasonable certainty that the person will suffer severe physical or mental harm as manifested by recent behavior demonstrating an inability to avoid risk or to protect the person adequately from impairment or injury.

34-B MRSA § 3801(4-A)

DEFINITION: SEVERE AND PERSISTENT MENTAL ILLNESS

“Severe and persistent mental illness” means:

- A diagnosis of one or more qualifying mental illnesses or disorders, AND
- A listed disability or functional impairment that
 - has persisted continuously or intermittently for at least one year, or
 - is expected to persist for at least one year, as a result of the qualifying illness or disorder.

The qualifying mental illnesses or disorders are:

- Schizophrenia
- Schizoaffective disorder or other psychotic disorder
- Major depressive disorder
- Bipolar disorder
- A combination of mental disorders sufficiently disabling to meet the criteria of functional disability

The listed disabilities or functional impairments include:

- Inability to adequately manage one’s own finances

- Inability to perform activities of daily living
- Inability to behave in ways that do not bring the person to the attention of law enforcement for dangerous acts or for acts that show the person’s inability to protect themselves from harm

34-B MRSA § 3801(8-A)

DEFINITION: INABILITY TO MAKE AN INFORMED DECISION

“Inability to make an informed decision” means:

- being unable to make a responsible decision whether to accept or refuse a recommended treatment
- as a result of lack of mental capacity to understand sufficiently the benefits and risks of the treatment
- after a thorough and informative explanation has been given by a qualified mental health professional.

34-B MRSA § 3801(10)

INVOLUNTARY OUTPATIENT TREATMENT SERVICES

The program of involuntary outpatient services is called the “Progressive Treatment Program.” The treatment services are delivered pursuant to an individualized treatment plan. The person ordered to follow the individualized treatment plan may be committed to the care and supervision of an ACT team or other outpatient facility.¹⁶

34-B MRSA § 3873-A (6) and (7)

¹⁶ Other outpatient facility is not defined in the statute.

APPLICATION FOR ADMISSION TO THE PROGRESSIVE TREATMENT PROGRAM

The superintendent or chief administrative officer of a psychiatric hospital, the Commissioner of the Department of Health and Human Services, the director of an ACT team, a medical practitioner, a law enforcement officer or the legal guardian of the person who is the subject of the application may seek an order to admit a person to the progressive treatment program. The application must be filed with the District Court.

34-B MRSA § 3873-A(1)

PROGRESSIVE TREATMENT PROGRAM: ADMISSION REQUIREMENTS

In order for a person to be admitted to the Progressive Treatment Program, the following conditions must apply:

- The person must have a severe and persistent mental illness;
- The person must pose a likelihood of serious harm as defined for purposes of the progressive treatment program. This includes a requirement that the person lacks ability to make an informed decision.
- The person must have a suitable individualized treatment plan;
- Licensed and qualified community providers are available to support the treatment plan;
- It is unlikely that the person would follow the treatment plan voluntarily;
- Court-ordered compliance with the plan will help to protect the person from interruptions in treatment, relapses or deterioration of mental health, and
- Compliance with the plan will enable the person to survive more safely in a community setting without posing a likelihood of serious harm.

34-B MRSA § 3873-A(1)

APPLICATION CONTENTS

The application must contain:

- A certificate of a medical practitioner stating the facts and opinions that support the application.
- The certificate must indicate that the opinions are based upon one or more recent examinations of the person or upon the practitioner's recent treatment of the person. The statute also says that the opinions may be based on personal observation and must include consideration of history and information from other sources considered reliable by the practitioner when those sources are available.
- A proposed treatment plan that identifies the licensed and qualified providers who are willing to support the plan.
- A statement certifying the following:
 - a copy of the application and attached documents were given to the person and the person's guardian or next of kin;
 - the person was notified of their right to retain an attorney or to have one appointed by the court;
 - the person was notified of their or their attorney's right to select an independent examiner; and
 - how to contact the District Court.

34-B MRSA § 3873-A(2)

NOTICES

Within two days of receiving the application, the court mails a notice of the hearing date to the person.

The notice is also sent to the person's guardian and spouse, parent or adult child, and if none are known or can be located, then to the person's next of kin or friend if known. If the applicant has reason to believe that the notice to any of these individuals would pose a risk of harm to the person, then the notice may not be given.

If the individual is not a patient in a hospital when the application is filed, the applicant must personally serve the individual and provide proof of the service with the court.

34-B MRSA § 3873-A(3)

APPOINTMENT OF INDEPENDENT EXAMINER

At least three days after the person is notified of their right to select or to have their attorney select an independent examiner, the court will arrange to have the person examined by a medical practitioner. The court gives preference to the person's selection if that practitioner is reasonably available.

34-B MRSA § 3873-A(4)

INDEPENDENT EXAMINATION

The independent examination may be conducted at a psychiatric hospital, a crisis center, at the offices of an ACT Team or other place that is not likely to have a harmful effect on the person's mental health.

The examiner reports to the court on the following:

- Whether the person is a mentally ill person. A mentally ill person is defined as a person having a psychiatric or other disease that substantially impairs the person's mental health or creates a substantial risk of suicide. It may include persons suffering from the effects of the use of drugs, narcotics, hallucinogens or intoxicants, including alcohol. However, a person with a developmental disability or a person diagnosed as a sociopath is not, for those reasons alone, considered a mentally ill person.
- Whether the person is suffering from a severe and persistent mental illness.
- Whether the person poses a likelihood of serious harm as defined for purposes of the progressive treatment program. Note that this definition includes a requirement that the person lacks ability to make an informed decision.

34-B MRSA § 3873-A(4)(C); 34-B MRSA § 3801(4-A), (5), (8-A), and (10).

COURT HEARING

The hearing must be held within 14 days of the date of application.

- The hearing may be postponed for up to 21 days if the hospital or the patient requests a postponement for a good reason or if the court independently determines there is good reason for postponing the hearing.
- The hearing will be conducted in an informal, but orderly manner, in a setting that is not likely to have a harmful effect on the mental health of the patient.
- The hearing is confidential and reports of the proceedings may not be released to the public or press without the person's consent and approval of the Court.
- If the person requests a public hearing, the court may allow the hearing to be public.

If the court doesn't hold the hearing within the required time or approved extension, the case must be dismissed.

34-B MRSA § 3873-A(5)

TRANSPORTATION TO HEARING

The applicant is responsible for transporting the person to and from the hearing.

34-B MRSA § 3873-A(5)(B)

RIGHTS AT HEARING

The person and any individual to whom notice is required to be sent has the right to appear at the hearing, to testify, to present witnesses and to cross-examine witnesses. If the person has not retained an attorney, an attorney will be appointed.

34-B MRSA § 3873-A(5)(C)

WHAT THE APPLICANT MUST PRESENT AT HEARING

At the hearing, the applicant must present expert testimony supporting the application and describing the proposed individual treatment plan. While the statute does not list specific findings the court must make, the applicant must establish that the person meets the eligibility requirements for the progressive treatment program under 34-B M.R.S. § 3873-A(1):

- The person must have a severe and persistent mental illness;
- The person must pose a likelihood of serious harm as defined for purposes of the progressive treatment program. This includes a requirement that the person lacks ability to make an informed decision.
- The person must have a suitable individualized treatment plan;
- Community resources must be available to support the treatment plan;
- It is unlikely that the person would follow the treatment plan voluntarily;
- Court-ordered compliance with the plan will help to protect the person from interruptions in treatment, relapses or deterioration of mental health, and
- Compliance with the plan will enable the person to survive more safely in a community setting without posing a likelihood of serious harm.

34-B MRSA § 3873-A(5)(E); 34-B MRSA § 3873-A(1)

EFFECT OF AN ADVANCE DIRECTIVE

A person may have an Advance Directive or durable health care power of attorney. The court may consider the content of these documents and receive testimony on them, but the law states that the court is not bound by their contents.

34-B MRSA § 3873-A(5)(F)

COURT ORDER

After notice, examination, and hearing, the court may issue an order—effective for up to 12 months—directing the individual to follow an individualized treatment plan and identifying incentives for compliance and potential consequences for noncompliance.

34-B MRSA § 3873-A(6)

COMPLIANCE

To ensure compliance with the treatment plan, the court may:

- Order commitment to the care and supervision of an ACT team or other outpatient facility, with reasonable and necessary restrictions or conditions to ensure plan compliance;
- Endorse an application for admission to a psychiatric hospital under § 3863, conditioned on a medical practitioner’s certificate that the person failed to comply with an essential requirement of the treatment plan; and
- Order that any present or conditional restrictions on the person’s liberty or control over assets or affairs be suspended or ended upon achievement of the designated goals under the plan.

34-B MRSA § 3873-A(7)(A)–(C)

CONSEQUENCES OF NON-COMPLIANCE WITH COURT ORDER

If the person fails to comply with the court’s order, including failure to comply with the treatment plan, the applicant may file a motion to enforce the order. The motion must include a certificate from a medical practitioner identifying the noncompliance.

After notice and hearing on the motion, if the court finds that the person has been noncompliant with the order and that the person poses a likelihood of serious harm the court may authorize emergency hospitalization.

34-B MRSA § 3873-A(8)

DURATION OF COURT ORDER

The court order may be effective for a period up to 12 months. The order is subject to termination or renewal as described below.

34-B MRSA § 3873(6)

APPEAL

The person may appeal the court order to the Superior Court. The appeal must be filed within 30 days of the District Court's order.

34-B MRSA § 3873-A(5)(I); 34-B MRSA § 3864(11); Rule 76D, Maine Rules of Civil Procedure

OTHER POST ORDER PROCEDURES

Any party to the original action may file a motion with the court to modify, extend, or dissolve the court order. If the court finds good cause, it may:

- Modify the order;
- Dissolve the order; or
- Order the term of the treatment plan to extend for a period of up to one year.

34-B MRSA § 3873-A(9)

INVOLUNTARY HOSPITALIZATION STATUTORY TIMELINES

EVENT	TIME
Release of voluntary patient who asks to leave	within 16 hours of request unless blue paper initiated within that time
Admission	within 5 days of certifying examination (note: the admission timeline can be restarted if no psychiatric hospital is identified for admission)
Certification following admission	within 24 hours of admission
Filing of judicial application	within 3 days (not <i>working</i> days) of date of admission – unless third day is a weekend or holiday, then next business day
Hospital notice to patient of right to retain counsel, select examiner, how to contact court, and copy of application	prior to filing of application
Notice mailed by court to patient with date of hearing	within 2 days of filing of application
Examination by independent examiner	at least 3 days after hospital notified patient of right to select examiner
Hearing	within 14 days of application
Continuance of initial hearing for cause	not to exceed 21 days from date of scheduled initial hearing
Continuance of hearing for purpose of resubmission and reconsideration of treatment plan	not to exceed 10 days after initial hearing
Issuance of court order	within 24 hours of the hearing
Length of commitment	not to exceed 4 months, initial commitment not to exceed 12 months, recommitments
Application for continued commitment	not later than 21 days prior to date of expiration of commitment order
Appeal to Superior Court	within 30 days

LINK TO FORMS

The Maine Department of Health and Human Services, Office of Substance Abuse and Mental Health Services posts forms relating to involuntary hospital commitment on its website. These forms are available here: <https://www.maine.gov/dhhs/obh/support-services/rights-and-legal-issues/involuntary-admissions>.

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